

PICG

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

10,213

FILE: B-194704

DATE: May 17, 1979

MATTER OF: Columbus Services, Inc.

DLG 01609

DIGEST:

[Protest alleging specification
improprieties] which is filed
after bid opening is untimely
and not for consideration on the
merits.

Columbus Services, Inc. (Columbus), a large business firm, protests the setting aside for exclusive small business participation of invitation for bids (IFB) No. IFB-03C-90440, issued by the General Services Administration (GSA), Washington, D. C. Columbus asserts that the GSA set-aside was improper because the solicitation excludes it from competition and, therefore, "discriminates against Columbus as the incumbent [contractor] and * * * as a large business."

AGC00017

The protest is untimely. The allegations relate to improprieties in the IFB. Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), provides that:

"Protest based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

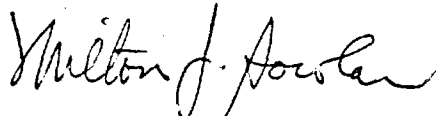
We have been advised by GSA that bid opening occurred on April 26, 1979. The protester's letter to our Office, however, was received on April 27, 1979. Therefore, the protest is untimely filed and not for consideration on the merits. See Complete Building Maintenance Co., Inc., B-190996, January 19, 1978, 78-1 CPD 52. While § 20.2(b)(3) of our Procedures provides that an untimely filed protest may be considered

005339

where, as here, it was sent by certified mail, if sent not later than the fifth day prior to the final date for filing, the United States Postal Service postmark indicates Columbus' certified letter was sent on April 24, 1979, less than 5 days before that date.

Furthermore, we point out that a contracting agency's determination to set aside a procurement for small business, and whether under a small business set-aside adequate competition may reasonably be anticipated so that awards will be made at reasonable prices, is basically a business judgment requiring the exercise of broad discretion by the contracting officer. Generally, the exercise of that discretion is not subject to question by our Office in the absence of fraud or bad faith. See Development Associates, Inc., et al., B-183773, August 18, 1975, 75-2 CPD 112; Kinnett Dairies, Inc., B-187501, March 24, 1977, 77-1 CPD 209.

The protest is dismissed.



Milton J. Socolar
General Counsel